

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2015 OCT 29 P 2:10

PAUL JONES

Plaintiff
V.

Civil Action No. 1:14-cv-10218-GAO

Defendants

EXPERIAN INFORMATION SOLUTION et al

PLAINTIFF'S MOTION TO STRIKE DOCKET # 187

AND MEMORANDUM IN SUPPORT OF

MOTION FOR LEAVE TO FILE AMENDED SECOND AMENDED COMPLAINT

Plaintiff requests leave of court to file an Amended Second Amended Complaint to cure all the deficiency's in his Second Amended Complaint, Pursuant to Federal Rule of Civil Procedure 15(a), Local Rule 7.1, and this Court's August 11, 2015, Scheduling Order, Plaintiffs Paul Jones ("Plaintiffs"), hereby respectfully submit this Memorandum in support of their Motion for Leave to File Amended Complaint.

Introduction

1. Plaintiff is Paul Jones & Defendant is Revenue Assistant Corporation aka Softloft (hereafter Revenue) at this time all other defendants have settled or have been dismissed from the complaint.

2. Plaintiff sued defendant Revenue for violations of the Telephone Consumer Protection Act (TCPA) and the Federal Debt Collection Practices Act (FDCPA, Massachusetts Unfair & Deceptive Trade Practices Act. & the Massachusetts Debt Collection Regulation Act 940 CMR 7.00.

3. Defendant filed an answer to the original complaint on 04/18/2014 and answered the amended complaint on 11/24/2014, plaintiff has until December 15, 2015 to amend his complaint (See Scheduling order doc # 166)

4. The plaintiff has discovered through discovery that there are other defendants that need to be added to the complaint.

5. Plaintiff called attorney Schneiderman to confer on October 1, 2015 at 2:36 pm, he did not answer his direct line, and I left a message, about 3:30 pm attorney Schneiderman called me back and we conferred, we discussed the Second Amended lawsuit in detail, I informed him of all the statues I was dropping as well as the new statues & defendants I was adding. After conferring with attorney Andrew Schneiderman we could not come to an agreement regarding the amended pleadings / Amended complaint.

6. Defendants filed a motion to oppose plaintiffs Second Amended complaint on or about October 15, 2015.

7. Plaintiff called Attorney Andrew Schneiderman on October 29, 2015 at 12:39 pm to confer regarding me striking docket # 187 and filing a new Amended Second Complaint at 139pm Attorney Andrew Schneiderman emailed me and Stated "Mr. Jones, Thank you for your voice message. We certainly do not consent to your motion to strike or any attempt to file a second amended complaint. The Court has expressly ruled against you on this issue and we will seek sanctions in connection with any motion filed. I am not sure the discovery to which you are referring in your voice message. We have provided responses to your discovery requests. You can expect to receive our shortly, and a deposition notice as well. Thanks, Andrew.

7. Plaintiff has satisfied the FRCP to confer with the defendant and they object to plaintiff attempts to cure any deficiencies that there are.

8. Plaintiff is filing a motion to strike docket 187 and a motion of memorandum / motion for leave to file An Amended Second Amended Complaint on Oct 29, 2015 with t Exihbits.

Argument

6. Federal Rule of Civil Procedure 15(a) contemplates that a court will freely grant leave to file an amended complaint when the interests of justice so require. Additionally, the First Circuit has a liberal policy of allowing amendments to a complaint. Granting this motion allows Plaintiffs to describe in further detail the issues in this action, eliminating disputes over form that would waste this Court's time. Unless the opposing party can show prejudice, bad faith, or undue delay, a court should grant leave to file an amended pleading. *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230 (1962). Leave to amend should be freely given when justice so requires. Fed. R. Civ. P. 15(a); *Walton v. Mental Health Ass 'n*, 168 F.3d 661, 665 (3d Cir. 1999).

7. The court should grant the filing of Plaintiff's amended pleading / Amended Complaint because it is Plaintiff's second amended complaint and is being amended to add new evidence that was flushed out during discovery.

8. Plaintiff is also dropping Defendants Michael & John Sheehan, two counts and adding a count and properly pleading he is a consumer under MGL 159c 1-14, TCPA as well as the MGL 93a.

9. Revenue Assistance Corporation aka Softloft will not be prejudiced by Plaintiff's amended pleading / Amended Complaint as we are still in the discovery phase and discovery is still open.

10. The plaintiff is amending his complaint, he is so before the close of discovery and within the time frame to amend pleadings set out in the Scheduling Order which the dead line is December 15, 2015.

11. Defendants' and plaintiffs discovery has only been through documents and interrogatories thus far--they (we) have not taken any depositions as of October 29, 2015.

12. The newly-alleged facts in the Second Amended Complaint are already well-known to Defendants and in their possession.

13. Plaintiffs is filing his amended pleading along with this motion.

Conclusion

14. Plaintiff is filing his amended Second Amended complaint so that the complaint will reflect the newly discovered evidence that plaintiff received during the discovery phase, and to drop defendants Michael & John Sheehan and the Direct Energy defendants and to drop a count and add a count MGL 159 esq., and also plead he is a consumer under MGL 159, For these reasons, Plaintiff asks the court to grant his motion to strike docket 187 and for leave to file the amended Second Amended pleading.

Dated: October 29, 2015

Paul Jones /s/ PAUL JONES

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CERTIFICATE OF SERVICE

I certify that an original copy of the Plaintiffs Memorandum in Support for Leave to file an Amended Second Amended Complaint and the Second Amended complaint was mailed to the below named party's on the 29th day of October 2015.

Done this 29th day of October 2015

Paul Jones /s/ PAUL JONES

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